

AMENDED IN ASSEMBLY JUNE 22, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 326

Introduced by Senator Strickland

February 25, 2009

An act to amend Section ~~65583~~ 65584.09 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 326, as amended, Strickland. Land use: housing element.

~~(1) The~~

The Planning and Zoning Law requires each city, county, and city and county to prepare and adopt a general plan that contains certain mandatory elements, including a housing element that analyzes existing and projected housing needs and includes a statement of goals, quantified objectives, policies, financial resources, and scheduled programs for the maintenance, preservation, improvement, and development of housing. The Department of Housing and Community Development, in consultation with each council of governments, is required to calculate the determine each region's existing and projected regional housing need, as specified. The appropriate council of governments, or for cities and counties without a council of governments, the department, is required to adopt a final regional housing need plan that allocates a share of the regional housing need to each city, county, or city and county, as specified. For specified housing elements, if a city or county in the prior planning period failed to identify or make available adequate sites to accommodate that portion of the regional housing need allocated to it, the city or county is required, within the first year of the planning period of the new housing

element, to zone or rezone adequate sites to accommodate the unaccommodated portion of the regional housing need allocation from the prior planning period.

~~This bill would additionally require the housing element to include as part of the analysis of existing and projected housing needs, a quantification of the locality's existing and projected foreclosure rate and its impact on housing needs. By adding to the duties of local officials, this bill would impose a state-mandated local program.~~

This bill would, as an alternative, provide that if a city or county in the prior planning period failed to identify or make available adequate sites to accommodate that portion of the regional housing need allocated to it, the city or county, within the first year of the planning period of the new housing element, would be authorized to identify adequate sites to accommodate the unaccommodated portion of the regional housing need allocation from the prior planning period.

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 65584.09 of the Government Code is
- 2 amended to read:
- 3 65584.09. (a) For housing elements due pursuant to Section
- 4 65588 on or after January 1, 2006, if a city or county in the prior
- 5 planning period failed to identify or make available adequate sites
- 6 to accommodate that portion of the regional housing need allocated
- 7 pursuant to Section 65584, then the city or county shall, within
- 8 the first year of the planning period of the new housing element,
- 9 *identify*, zone, or rezone adequate sites to accommodate the
- 10 unaccommodated portion of the regional housing need allocation
- 11 from the prior planning period.
- 12 (b) The requirements under subdivision (a) shall be in addition
- 13 to any *identification*, zoning, or rezoning required to accommodate

the jurisdiction's share of the regional housing need pursuant to Section 65584 for the new planning period.

(c) Nothing in this section shall be construed to diminish the requirement of a city or county to accommodate its share of the regional housing need for each income level during the planning period set forth in Section 65588, including the obligations to (1) implement programs included pursuant to Section 65583 to achieve the goals and objectives, including programs to zone or rezone land, and (2) timely adopt a housing element with an inventory described in paragraph (3) of subdivision (a) of Section 65583 and a program to make sites available pursuant to paragraph (1) of subdivision (c) of Section 65583, which can accommodate the jurisdiction's share of the regional housing need.

~~SECTION 1. Section 65583 of the Government Code is amended to read:~~

~~65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, mobilehomes, and emergency shelters, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:~~

~~(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:~~

~~(1) An analysis of population and employment trends and documentation of projections, a quantification of the locality's existing and projected housing needs for all income levels, including extremely low income households, as defined in subdivision (b) of Section 50105 and Section 50106 of the Health and Safety Code, and a quantification of the locality's existing and projected foreclosure rate and its impact on housing needs. These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584. Local agencies shall calculate the subset of very low income households allotted under Section 65584 that qualify as extremely low income households. The local agency may either use available census data~~

1 to calculate the percentage of very low income households that
2 qualify as extremely low income households or presume that 50
3 percent of the very low income households qualify as extremely
4 low income households. The number of extremely low income
5 households and very low income households shall equal the
6 jurisdiction's allocation of very low income households pursuant
7 to Section 65584.

8 (2) ~~An analysis and documentation of household characteristics;~~
9 ~~including level of payment compared to ability to pay, housing~~
10 ~~characteristics, including overcrowding, and housing stock~~
11 ~~condition.~~

12 (3) ~~An inventory of land suitable for residential development,~~
13 ~~including vacant sites and sites having potential for redevelopment,~~
14 ~~and an analysis of the relationship of zoning and public facilities~~
15 ~~and services to these sites.~~

16 (4) (A) ~~The identification of a zone or zones where emergency~~
17 ~~shelters are allowed as a permitted use without a conditional use~~
18 ~~or other discretionary permit. The identified zone or zones shall~~
19 ~~include sufficient capacity to accommodate the need for emergency~~
20 ~~shelter identified in paragraph (7), except that each local~~
21 ~~government shall identify a zone or zones that can accommodate~~
22 ~~at least one year-round emergency shelter. If the local government~~
23 ~~cannot identify a zone or zones with sufficient capacity, the local~~
24 ~~government shall include a program to amend its zoning ordinance~~
25 ~~to meet the requirements of this paragraph within one year of the~~
26 ~~adoption of the housing element. The local government may~~
27 ~~identify additional zones where emergency shelters are permitted~~
28 ~~with a conditional use permit. The local government shall also~~
29 ~~demonstrate that existing or proposed permit processing,~~
30 ~~development, and management standards are objective and~~
31 ~~encourage and facilitate the development of, or conversion to,~~
32 ~~emergency shelters. Emergency shelters may only be subject to~~
33 ~~those development and management standards that apply to~~
34 ~~residential or commercial development within the same zone except~~
35 ~~that a local government may apply written, objective standards~~
36 ~~that include all of the following:~~

37 (i) ~~The maximum number of beds or persons permitted to be~~
38 ~~served nightly by the facility.~~

39 (ii) ~~Off-street parking based upon demonstrated need, provided~~
40 ~~that the standards do not require more parking for emergency~~

1 ~~shelters than for other residential or commercial uses within the~~
2 ~~same zone.~~

3 ~~(iii) The size and location of exterior and interior onsite waiting~~
4 ~~and client intake areas.~~

5 ~~(iv) The provision of onsite management.~~

6 ~~(v) The proximity to other emergency shelters, provided that~~
7 ~~emergency shelters are not required to be more than 300 feet apart.~~

8 ~~(vi) The length of stay.~~

9 ~~(vii) Lighting.~~

10 ~~(viii) Security during hours that the emergency shelter is in~~
11 ~~operation.~~

12 ~~(B) The permit processing, development, and management~~
13 ~~standards applied under this paragraph shall not be deemed to be~~
14 ~~discretionary acts within the meaning of the California~~
15 ~~Environmental Quality Act (Division 13 (commencing with Section~~
16 ~~21000) of the Public Resources Code).~~

17 ~~(C) A local government that can demonstrate to the satisfaction~~
18 ~~of the department the existence of one or more emergency shelters~~
19 ~~either within its jurisdiction or pursuant to a multijurisdictional~~
20 ~~agreement that can accommodate that jurisdiction's need for~~
21 ~~emergency shelter identified in paragraph (7) may comply with~~
22 ~~the zoning requirements of subparagraph (A) by identifying a zone~~
23 ~~or zones where new emergency shelters are allowed with a~~
24 ~~conditional use permit.~~

25 ~~(D) A local government with an existing ordinance or ordinances~~
26 ~~that comply with this paragraph shall not be required to take~~
27 ~~additional action to identify zones for emergency shelters. The~~
28 ~~housing element must only describe how existing ordinances,~~
29 ~~policies, and standards are consistent with the requirements of this~~
30 ~~paragraph.~~

31 ~~(5) An analysis of potential and actual governmental constraints~~
32 ~~upon the maintenance, improvement, or development of housing~~
33 ~~for all income levels, including the types of housing identified in~~
34 ~~paragraph (1) of subdivision (c), and for persons with disabilities~~
35 ~~as identified in the analysis pursuant to paragraph (7), including~~
36 ~~land use controls, building codes and their enforcement, site~~
37 ~~improvements, fees and other exactions required of developers,~~
38 ~~and local processing and permit procedures. The analysis shall~~
39 ~~also demonstrate local efforts to remove governmental constraints~~
40 ~~that hinder the locality from meeting its share of the regional~~

1 ~~housing need in accordance with Section 65584 and from meeting~~
2 ~~the need for housing for persons with disabilities, supportive~~
3 ~~housing, transitional housing, and emergency shelters identified~~
4 ~~pursuant to paragraph (7). Transitional housing and supportive~~
5 ~~housing shall be considered a residential use of property, and shall~~
6 ~~be subject only to those restrictions that apply to other residential~~
7 ~~dwellings of the same type in the same zone.~~

8 ~~(6) An analysis of potential and actual nongovernmental~~
9 ~~constraints upon the maintenance, improvement, or development~~
10 ~~of housing for all income levels, including the availability of~~
11 ~~financing, the price of land, and the cost of construction.~~

12 ~~(7) An analysis of any special housing needs, such as those of~~
13 ~~the elderly, persons with disabilities, large families, farmworkers,~~
14 ~~families with female heads of households, and families and persons~~
15 ~~in need of emergency shelter. The need for emergency shelter shall~~
16 ~~be assessed based on annual and seasonal need. The need for~~
17 ~~emergency shelter may be reduced by the number of supportive~~
18 ~~housing units that are identified in an adopted 10-year plan to end~~
19 ~~chronic homelessness and that are either vacant or for which~~
20 ~~funding has been identified to allow construction during the~~
21 ~~planning period.~~

22 ~~(8) An analysis of opportunities for energy conservation with~~
23 ~~respect to residential development.~~

24 ~~(9) An analysis of existing assisted housing developments that~~
25 ~~are eligible to change from low-income housing uses during the~~
26 ~~next 10 years due to termination of subsidy contracts, mortgage~~
27 ~~prepayment, or expiration of restrictions on use. “Assisted housing~~
28 ~~developments,” for the purpose of this section, shall mean~~
29 ~~multifamily rental housing that receives governmental assistance~~
30 ~~under federal programs listed in subdivision (a) of Section~~
31 ~~65863.10, state and local multifamily revenue bond programs,~~
32 ~~local redevelopment programs, the federal Community~~
33 ~~Development Block Grant Program, or local in-lieu fees. “Assisted~~
34 ~~housing developments” shall also include multifamily rental units~~
35 ~~that were developed pursuant to a local inclusionary housing~~
36 ~~program or used to qualify for a density bonus pursuant to Section~~
37 ~~65916.~~

38 ~~(A) The analysis shall include a listing of each development by~~
39 ~~project name and address, the type of governmental assistance~~
40 ~~received, the earliest possible date of change from low-income use~~

1 and the total number of elderly and nonelderly units that could be
2 lost from the locality's low-income housing stock in each year
3 during the 10-year period. For purposes of state and federally
4 funded projects, the analysis required by this subparagraph need
5 only contain information available on a statewide basis.

6 (B) The analysis shall estimate the total cost of producing new
7 rental housing that is comparable in size and rent levels, to replace
8 the units that could change from low-income use, and an estimated
9 cost of preserving the assisted housing developments. This cost
10 analysis for replacement housing may be done aggregately for
11 each five-year period and does not have to contain a
12 project-by-project cost estimate.

13 (C) The analysis shall identify public and private nonprofit
14 corporations known to the local government which have legal and
15 managerial capacity to acquire and manage these housing
16 developments.

17 (D) The analysis shall identify and consider the use of all federal,
18 state, and local financing and subsidy programs which can be used
19 to preserve, for lower income households, the assisted housing
20 developments, identified in this paragraph, including, but not
21 limited to, federal Community Development Block Grant Program
22 funds, tax increment funds received by a redevelopment agency
23 of the community, and administrative fees received by a housing
24 authority operating within the community. In considering the use
25 of these financing and subsidy programs, the analysis shall identify
26 the amounts of funds under each available program which have
27 not been legally obligated for other purposes and which could be
28 available for use in preserving assisted housing developments.

29 (b) (1) A statement of the community's goals, quantified
30 objectives, and policies relative to the maintenance, preservation,
31 improvement, and development of housing.

32 (2) It is recognized that the total housing needs identified
33 pursuant to subdivision (a) may exceed available resources and
34 the community's ability to satisfy this need within the content of
35 the general plan requirements outlined in Article 5 (commencing
36 with Section 65300). Under these circumstances, the quantified
37 objectives need not be identical to the total housing needs. The
38 quantified objectives shall establish the maximum number of
39 housing units by income category, including extremely low income;

1 that can be constructed, rehabilitated, and conserved over a
2 five-year time period.

3 (e) A program which sets forth a schedule of actions during the
4 planning period, each with a timeline for implementation, which
5 may recognize that certain programs are ongoing, such that there
6 will be beneficial impacts of the programs within the planning
7 period, that the local government is undertaking or intends to
8 undertake to implement the policies and achieve the goals and
9 objectives of the housing element through the administration of
10 land use and development controls, the provision of regulatory
11 concessions and incentives, and the utilization of appropriate
12 federal and state financing and subsidy programs when available
13 and the utilization of moneys in a low- and moderate-income
14 housing fund of an agency if the locality has established a
15 redevelopment project area pursuant to the Community
16 Redevelopment Law (Division 24 (commencing with Section
17 33000) of the Health and Safety Code). In order to make adequate
18 provision for the housing needs of all economic segments of the
19 community, the program shall do all of the following:

20 (1) Identify actions that will be taken to make sites available
21 during the planning period of the general plan with appropriate
22 zoning and development standards and with services and facilities
23 to accommodate that portion of the city's or county's share of the
24 regional housing need for each income level that could not be
25 accommodated on sites identified in the inventory completed
26 pursuant to paragraph (3) of subdivision (a) without rezoning, and
27 to comply with the requirements of Section 65584.09. Sites shall
28 be identified as needed to facilitate and encourage the development
29 of a variety of types of housing for all income levels, including
30 multifamily rental housing, factory-built housing, mobilehomes,
31 housing for agricultural employees, supportive housing,
32 single-room occupancy units, emergency shelters, and transitional
33 housing.

34 (A) Where the inventory of sites, pursuant to paragraph (3) of
35 subdivision (a), does not identify adequate sites to accommodate
36 the need for groups of all household income levels pursuant to
37 Section 65584, rezoning of those sites, including adoption of
38 minimum density and development standards, for jurisdictions
39 with an eight-year housing element planning period pursuant to
40 Section 65588, shall be completed no later than three years after

1 ~~either the date the housing element is adopted pursuant to~~
2 ~~subdivision (f) of Section 65585 or the date that is 90 days after~~
3 ~~receipt of comments from the department pursuant to subdivision~~
4 ~~(b) of Section 65585, whichever is earlier, unless the deadline is~~
5 ~~extended pursuant to subdivision (f). Notwithstanding the~~
6 ~~foregoing, for a local government that fails to adopt a housing~~
7 ~~element within 120 days of the statutory deadline in Section 65588~~
8 ~~for adoption of the housing element, rezoning of those sites,~~
9 ~~including adoption of minimum density and development standards,~~
10 ~~shall be completed no later than three years and 120 days from the~~
11 ~~statutory deadline in Section 65588 for adoption of the housing~~
12 ~~element.~~

13 ~~(B) Where the inventory of sites, pursuant to paragraph (3) of~~
14 ~~subdivision (a), does not identify adequate sites to accommodate~~
15 ~~the need for groups of all household income levels pursuant to~~
16 ~~Section 65584, the program shall identify sites that can be~~
17 ~~developed for housing within the planning period pursuant to~~
18 ~~subdivision (h) of Section 65583.2. The identification of sites shall~~
19 ~~include all components specified in subdivision (b) of Section~~
20 ~~65583.2.~~

21 ~~(C) Where the inventory of sites pursuant to paragraph (3) of~~
22 ~~subdivision (a) does not identify adequate sites to accommodate~~
23 ~~the need for farmworker housing, the program shall provide for~~
24 ~~sufficient sites to meet the need with zoning that permits~~
25 ~~farmworker housing use by right, including density and~~
26 ~~development standards that could accommodate and facilitate the~~
27 ~~feasibility of the development of farmworker housing for low- and~~
28 ~~very low income households.~~

29 ~~(2) Assist in the development of adequate housing to meet the~~
30 ~~needs of extremely low, very low, low-, and moderate-income~~
31 ~~households.~~

32 ~~(3) Address and, where appropriate and legally possible, remove~~
33 ~~governmental constraints to the maintenance, improvement, and~~
34 ~~development of housing, including housing for all income levels~~
35 ~~and housing for persons with disabilities. The program shall remove~~
36 ~~constraints to, and provide reasonable accommodations for housing~~
37 ~~designed for, intended for occupancy by, or with supportive~~
38 ~~services for, persons with disabilities.~~

39 ~~(4) Conserve and improve the condition of the existing~~
40 ~~affordable housing stock, which may include addressing ways to~~

1 mitigate the loss of dwelling units demolished by public or private
2 action.

3 ~~(5) Promote housing opportunities for all persons regardless of~~
4 ~~race, religion, sex, marital status, ancestry, national origin, color,~~
5 ~~familial status, or disability.~~

6 ~~(6) Preserve for lower income households the assisted housing~~
7 ~~developments identified pursuant to paragraph (9) of subdivision~~
8 ~~(a). The program for preservation of the assisted housing~~
9 ~~developments shall utilize, to the extent necessary, all available~~
10 ~~federal, state, and local financing and subsidy programs identified~~
11 ~~in paragraph (9) of subdivision (a), except where a community has~~
12 ~~other urgent needs for which alternative funding sources are not~~
13 ~~available. The program may include strategies that involve local~~
14 ~~regulation and technical assistance.~~

15 ~~(7) The program shall include an identification of the agencies~~
16 ~~and officials responsible for the implementation of the various~~
17 ~~actions and the means by which consistency will be achieved with~~
18 ~~other general plan elements and community goals. The local~~
19 ~~government shall make a diligent effort to achieve public~~
20 ~~participation of all economic segments of the community in the~~
21 ~~development of the housing element, and the program shall~~
22 ~~describe this effort.~~

23 ~~(d) (1) A local government may satisfy all or part of its~~
24 ~~requirement to identify a zone or zones suitable for the~~
25 ~~development of emergency shelters pursuant to paragraph (4) of~~
26 ~~subdivision (a) by adopting and implementing a multijurisdictional~~
27 ~~agreement, with a maximum of two other adjacent communities,~~
28 ~~that requires the participating jurisdictions to develop at least one~~
29 ~~year-round emergency shelter within two years of the beginning~~
30 ~~of the planning period.~~

31 ~~(2) The agreement shall allocate a portion of the new shelter~~
32 ~~capacity to each jurisdiction as credit towards its emergency shelter~~
33 ~~need, and each jurisdiction shall describe how the capacity was~~
34 ~~allocated as part of its housing element.~~

35 ~~(3) Each member jurisdiction of a multijurisdictional agreement~~
36 ~~shall describe in its housing element all of the following:~~

37 ~~(A) How the joint facility will meet the jurisdiction's emergency~~
38 ~~shelter need.~~

1 ~~(B) The jurisdiction's contribution to the facility for both the~~
2 ~~development and ongoing operation and management of the~~
3 ~~facility.~~

4 ~~(C) The amount and source of the funding that the jurisdiction~~
5 ~~contributes to the facility.~~

6 ~~(4) The aggregate capacity claimed by the participating~~
7 ~~jurisdictions in their housing elements shall not exceed the actual~~
8 ~~capacity of the shelter.~~

9 ~~(e) Except as otherwise provided in this article, amendments to~~
10 ~~this article that alter the required content of a housing element~~
11 ~~shall apply to both of the following:~~

12 ~~(1) A housing element or housing element amendment prepared~~
13 ~~pursuant to subdivision (c) of Section 65588 or Section 65584.02,~~
14 ~~when a city, county, or city and county submits a draft to the~~
15 ~~department for review pursuant to Section 65585 more than 90~~
16 ~~days after the effective date of the amendment to this section.~~

17 ~~(2) Any housing element or housing element amendment~~
18 ~~prepared pursuant to subdivision (c) of Section 65588 or Section~~
19 ~~65584.02, when the city, county, or city and county fails to submit~~
20 ~~the first draft to the department before the due date specified in~~
21 ~~Section 65588 or 65584.02.~~

22 ~~(f) The deadline for completing required rezoning pursuant to~~
23 ~~subparagraph (A) of paragraph (1) of subdivision (c) shall be~~
24 ~~extended by one year if the local government has completed the~~
25 ~~rezoning at densities sufficient to accommodate at least 75 percent~~
26 ~~of the sites for low- and very low income households and if the~~
27 ~~legislative body at the conclusion of a public hearing determines,~~
28 ~~based upon substantial evidence, that any of the following~~
29 ~~circumstances exist:~~

30 ~~(1) The local government has been unable to complete the~~
31 ~~rezoning because of the action or inaction beyond the control of~~
32 ~~the local government of any other state federal or local agency.~~

33 ~~(2) The local government is unable to complete the rezoning~~
34 ~~because of infrastructure deficiencies due to fiscal or regulatory~~
35 ~~constraints.~~

36 ~~(3) The local government must undertake a major revision to~~
37 ~~its general plan in order to accommodate the housing-related~~
38 ~~policies of a sustainable communities strategy or an alternative~~
39 ~~planning strategy adopted pursuant to Section 65080.~~

1 The resolution and the findings shall be transmitted to the
2 department together with a detailed budget and schedule for
3 preparation and adoption of the required rezonings, including plans
4 for citizen participation and expected interim action. The schedule
5 shall provide for adoption of the required rezoning within one year
6 of the adoption of the resolution.

7 (g) (1) If a local government fails to complete the rezoning by
8 the deadline provided in subparagraph (A) of paragraph (1) of
9 subdivision (c), as it may be extended pursuant to subdivision (f),
10 except as provided in paragraph (2), a local government may not
11 disapprove a housing development project, nor require a
12 conditional use permit, planned unit development permit, or other
13 locally imposed discretionary permit, or impose a condition that
14 would render the project infeasible, if the housing development
15 project (A) is proposed to be located on a site required to be
16 rezoned pursuant to the program action required by that
17 subparagraph; and (B) complies with applicable, objective general
18 plan and zoning standards and criteria, including design review
19 standards, described in the program action required by that
20 subparagraph. Any subdivision of sites shall be subject to the
21 Subdivision Map Act. Design review shall not constitute a “project”
22 for purposes of Division 13 (commencing with Section 21000) of
23 the Public Resources Code.

24 (2) A local government may disapprove a housing development
25 described in paragraph (1) if it makes written findings supported
26 by substantial evidence on the record that both of the following
27 conditions exist:

28 (A) The housing development project would have a specific,
29 adverse impact upon the public health or safety unless the project
30 is disapproved or approved upon the condition that the project be
31 developed at a lower density. As used in this paragraph, a “specific,
32 adverse impact” means a significant, quantifiable, direct, and
33 unavoidable impact, based on objective, identified written public
34 health or safety standards, policies, or conditions as they existed
35 on the date the application was deemed complete.

36 (B) There is no feasible method to satisfactorily mitigate or
37 avoid the adverse impact identified pursuant to paragraph (1), other
38 than the disapproval of the housing development project or the
39 approval of the project upon the condition that it be developed at
40 a lower density.

1 ~~(3) The applicant or any interested person may bring an action~~
2 ~~to enforce this subdivision. If a court finds that the local agency~~
3 ~~disapproved a project or conditioned its approval in violation of~~
4 ~~this subdivision, the court shall issue an order or judgment~~
5 ~~compelling compliance within 60 days. The court shall retain~~
6 ~~jurisdiction to ensure that its order or judgment is carried out. If~~
7 ~~the court determines that its order or judgment has not been carried~~
8 ~~out within 60 days, the court may issue further orders to ensure~~
9 ~~that the purposes and policies of this subdivision are fulfilled. In~~
10 ~~any such action, the city, county, or city and county shall bear the~~
11 ~~burden of proof.~~

12 ~~(4) For purposes of this subdivision, “housing development~~
13 ~~project” means a project to construct residential units for which~~
14 ~~the project developer provides sufficient legal commitments to the~~
15 ~~appropriate local agency to ensure the continued availability and~~
16 ~~use of at least 49 percent of the housing units for very low, low-,~~
17 ~~and moderate-income households with an affordable housing cost~~
18 ~~or affordable rent, as defined in Section 50052.5 or 50053 of the~~
19 ~~Health and Safety Code, respectively, for the period required by~~
20 ~~the applicable financing.~~

21 ~~(h) An action to enforce the program actions of the housing~~
22 ~~element shall be brought pursuant to Section 1085 of the Code of~~
23 ~~Civil Procedure.~~

24 ~~SEC. 2. If the Commission on State Mandates determines that~~
25 ~~this act contains costs mandated by the state, reimbursement to~~
26 ~~local agencies and school districts for those costs shall be made~~
27 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
28 ~~4 of Title 2 of the Government Code.~~